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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No.

RITCHIE A. HARRIS,

Respondent,

-vs-

MANUFACTURERS NATIONAL BANK OF DETROIT, a national banking association,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Manufacturers National Bank of Detroit, a national banking association, respectfully petitions this Honorable Court for a Writ of Certiorari to review a judgment of the United States court of appeals for the sixth circuit filed March 30, 1972.

(a) Opinions and Judgments of the Courts Below

(i) Opinion of the United States district court for the eastern district of Michigan, No. 36171, filed June 11, 1971. Copies of the opinion and order appear as Appendix A and A-1, respectively.

(ii) Opinion and judgment of the United States court of appeals for the sixth circuit, No. 71-1788, 457 F2d 631, filed March 30, 1972. Copies of the opinion and judgment appear as Appendix B and B-1, respectively.

(b) Jurisdiction of the Court

The statute conferring on this Court jurisdiction to review the court of appeals' judgment dated and entered on March 30, 1972, by writ of Certiorari is 28 USC 1254.

(c) Questions Presented for Review

(i) § 16 of the bankruptcy act provides that the liabilities of a co-debtor of a bankrupt shall not be altered by the bankrupt's discharge. § 17 of the act provides, with exceptions not pertinent, that discharge releases a bankrupt from all his provable debts. Michigan law permits a wife's interest in property owned by her and her husband as tenants by the entirety to be reached in satisfaction of a joint judgment against the spouses. In such circumstances, is it proper for a federal court so to construe § 17 that it deprives a joint judgment creditor of the spouses of the protection of § 16 and, therefore, to enjoin enforcement of the joint judgment even as against the wife?

(ii) When state law permits husband and wife to hold property as tenants by the entirety, such property not being subject to the jurisdiction of the bankruptcy court in proceedings against the husband alone, and when state law also permits such property to be executed against upon a joint judgment against the husband and wife even after the bankrupt husband's discharge, is it proper for a federal court to enjoin such a joint judgment creditor from executing upon the property held by the entirety in satisfaction of the wife's liability under the joint judgment?

(d) Constitutional Provisions and Statutes Involved

(i) Bankruptcy act, § 16 (11 USC § 34):

"The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt."

(ii) Bankruptcy act, § 17 (11 USC § 35):

"(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: *Provided, however,* That a discharge in bankruptcy shall not release a bankrupt from any taxes (a) which were not assessed in any case in which the bankrupt failed to make a return required by law, (b) which were assessed within one year preceding bankruptcy in any case in which the bankrupt failed to make a return required by law, (c) which were not reported on a return made by the bankrupt and which were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the bankrupt, (d) with respect to which the bankrupt made a false or fraudulent return, or willfully attempted in any manner to evade or defeat, or (e) which the bankrupt has collected or withheld from others as required by the laws of the United States or any State or political subdivision thereof, but has not paid over; but a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to him under this Act: *And provided further,* That a discharge in bankruptcy shall not release or affect any tax lien; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversa-

tion; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment."

(iii) Bankruptcy act, § 70(a) (11 USC § 110):

See Appendix C.

(iv) Michigan public acts of 1917, No. 158, as amended by public acts of 1929, No. 287, (CL 1948, 557.51-557.54, MSA 26.181-26.184):

"SECTION 1. The common law disability of married women to make and enter into the class or kind of contracts hereinafter specified in section two, is hereby abrogated and abolished.

"SEC. 2. Hereafter married women shall be possessed of the power and capacity, and it shall be competent for them to bind and makes [make] themselves jointly liable with their husbands upon any written instrument as hereinafter provided. Said liability to extend, however, only to the property described in the following section.

"SEC. 3. Hereafter the real estate of the husband and wife owned by them as tenants by entirety, or the real estate acquired by either as survivor of the other, or in the event of divorce the interest of either in real estate which

was previously owned by them as tenants by the entirety, shall be liable to seizure and sale on execution, and all personal property and choses in action owned by husband and wife jointly with right of survivorship therein, shall be subject to writ of garnishment and all other process provided by law, in satisfaction of any judgment which has been recovered against the persons who were at the time of the execution of such written instrument husband and wife jointly or the survivor upon any instrument signed by both. In case the wife is the survivor, or in case the husband and wife have been divorced prior to the recovery of the judgment, a judgment against the wife may be satisfied only out of such property.

"SEC. 4. Such judgment or decree shall be enforced in all respects as now provided by law, except this, that in all cases where such liability is sought to be enforced as against the real estate of the husband and wife owned by them jointly as tenants by entirety or the crops, rents, profits or proceeds thereof or taken therefrom, or any personal property or choses in action owned by the husband and wife jointly with right of survivorship therein, the judgment or decree shall recite and it shall be the duty of the court to determine in such suit or proceeding whether such judgment or decree is rendered upon any written instrument and whether the parties defendant in such suit or proceeding and against whom such judgment or decree is rendered, were at the date of delivery of such instrument husband and wife, naming them, which recital of fact for the guidance of the officer shall be endorsed upon any writ of execution or other process issued thereon or for the collection thereof, which recital shall be conclusive as against the husband and wife and authorize the enforcement of such judgment or decree as against all property subject to the satisfaction thereof by virtue of this act."

(e) Concise Statement of the Case

On July 1, 1970, Ritchie A. Harris filed a petition in bankruptcy in the United States district court for the eastern district

of Michigan, receiving his discharge on November 2, 1970. A copy appears as Appendix D. On August 28, 1970, Manufacturers National Bank of Detroit, with notice of Mr. Harris' petition in bankruptcy, filed suit in the common pleas court for the city of Detroit seeking a joint (*not* joint and several) judgment against Mr. Harris and his wife for the unpaid balance due on an unsecured promissory note signed by both Mr. and Mrs. Harris on September 12, 1969. The Harrises had defaulted on the note on May 15, 1970, at which date the entire unpaid balance of the note thereupon became due and payable.

The common pleas court suit was tried after Mr. Harris' discharge and in a decision rendered March 24, 1971, the court entered its judgment against Mr. and Mrs. Harris jointly, but with no several liability against either of them. A copy appears as Appendix E.

On March 11, 1971, prior to the common pleas court's judgment, Mr. Harris brought suit in the federal district court seeking an injunction against the bank's pending common pleas court suit and against any attempt by the bank to collect upon the debt. The district court held that the bank was entitled to a joint judgment against the Harrises to be satisfied out of property held by them by the entirety despite the discharge of Mr. Harris in bankruptcy. It refused to issue an injunction and granted summary judgment, instead, in favor of the bank.

The sixth circuit court of appeals reversed the district court, holding that to permit enforcement of the Michigan court's judgment against the husband and wife jointly would be contrary to the "overriding purpose" of §17, that a discharge release the bankrupt from all provable debts, mentioning §16 only in a footnote to the effect that while §16 "appears to preserve the joint liability of a wife after a husband's discharge, thus permitting a joint judgment against the spouses", such effect could not be given to §16 in the case of property held by the entirety because "the discharged husband's interest in the property attachable thereunder cannot be isolated and removed from a joint judgment against the spouses". 457 F2d 631,635.

(f) Basis of Jurisdiction in Federal District Court

Jurisdiction in the federal district court was based on 28 USC § 1334.

(g) Argument

This case raises the question whether the right of a bankrupt to discharge under § 17 of the bankruptcy act supersedes the continuing liability provided by § 16 of the act of a co-debtor of the bankrupt by barring a joint judgment creditor of a discharged husband and his wife from executing upon property held by them as tenants by the entirety. The case also raises the issue of the propriety of the federal court prohibiting such a creditor from enforcing a joint judgment granted by a state court against the husband and wife by executing against their entirety property, the estate in which is created by the very state which has said such a joint judgment creditor may reach it in such circumstances. Finally, if the sixth circuit's decision is allowed to stand unreversed, it will have an adverse effect upon the availabi'ity of consumer credit, with resultant unfortunate results for Michigan and other states where spouses hold property jointly by the entirety or as community property.

1. SECTIONS 16 AND 17 OF THE BANKRUPTCY ACT CAN AND SHOULD BE INTERPRETED HARMONIOUSLY.

Section 16 clearly and unequivocally provides (and has since 1898) that "the liability of a person who is a co-debtor with . . . a bankrupt shall not be altered by the discharge of such bankrupt". § 17 provides that "a discharge in bankruptcy shall release a bankrupt from all of his provable debts . . ." with specified exceptions not here pertinent.

In Michigan a husband and wife may hold their real property as tenants by the entirety, in which case each is seised per tout et non per my; neither may dispose of any part of it without the consent of the other, nor may either subject it to payment of his or her individual debts. *Shultz* v. *Silver.* 323 Mich 454, 459 (1949). However, by statute in Michigan, CL

1948, 557.52-557.53, MSA 26.182-26.183, a creditor who has a written instrument by which husband and wife have made themselves jointly liable may recover a joint judgment against the husband and wife and satisfy it out of entirety property.

The result of the decision of the court of appeals, however, is to repeal the Michigan statutes just cited when one spouse has been discharged as a bankrupt and, in the process, to emasculate § 16. The court held that even though husband and wife were jointly liable to the bank by a written instrument and by Michigan law were liable to satisfy a joint judgment against them out of entirety property, the husband's discharge in bankruptcy immunizes both him *and his co-debtor wife from that liability*. This is a clear case of the discharge of the bankrupt altering (indeed, discharging) the liability of his co-debtor, that which Congress in § 16 expressly forbade.

Such a result is not only contrary to the Congressional mandate of § 16, but it is not necessary under the bankruptcy act, nor does it serve to provide additional assets of the bankrupt to satisfy *his* creditors since entirety property *in no* event becomes subject to administration in the bankruptcy court. Bankruptcy act, § 70(a), 11 USC § 110. See also 4A Collier on Bankruptcy 70.17, p. 181 and cases therein cited. The discharge releases the bankrupt from his liability for the joint debt, as required by § 17. However, the discharge does not, and by § 16 cannot, release the co-debtor of *her* liability, and this liability may, by Michigan law, be satisfied out of entirety property.

Phillips v. *Krakower*, 46 F2d 764 (4th Cir 1931), recognized the inequity and absurdity of permitting one spouse to use bankruptcy as a means of perpetrating a fraud upon the other spouse's creditors. There, in a case very similar to this, the court stayed the debtor's discharge to give the creditor an opportunity to obtain a judgment against the bankrupt and his co-debtor wife and to satisfy it against property owned by the co-debtors by the entirety under Maryland law. The propriety of such a course was recognized by this Court in *Lockwood* v. *Exchange Bank*, 190 US 294 (1903).

Krakower holds that it is proper to grant a stay of discharge in bankruptcy to permit a creditor to assert and to enforce his rights against a co-debtor. By a parity of reasoning, a creditor who begins an identical suit in a state court before discharge should be permitted, whenever he obtains judgment and whether or not there has been a stay of the discharge in bankruptcy, to execute against entirety property to enforce the co-debtor's liability as permitted by state law. If the creditor could obtain the stay, and this Court has said he can, what conceivable policy is served by requiring him to do so, thereby further clogging court dockets and further delaying the bankrupt's discharge? Once a bankrupt is discharged, *he* is released from all his provable debts, as required by § 17; but it does not follow that *his* release should also release his co-debtor.

This Court's decision in *Perez* v. *Campbell*, 402 US 637 (1971) does not dictate a contrary conclusion. This Court noted there that one of the primary purposes of the act is to give the bankrupt " 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.' " 402 US at 648. However, it is not a purpose of the act to do the same for co-debtors who are not adjudicated bankrupt. If Mrs. Harris also had filed bankruptcy, both Harrises then being in bankruptcy their entirety property would have been administered for the benefit of all their creditors (see 4A Collier on Bankruptcy 70.17, p. 185 and cases cited), and after discharge neither the bank nor anyone else would have had recourse against either of them. Mr. Harris' decision to seek bankruptcy alone, and his resultant discharge, still permit him to start life anew, unhampered by pre-existing debts, since any property he acquires subsequent to bankruptcy will not be liable to execution on the bank's joint judgment; but it does not follow that his wife, who did not seek relief in bankruptcy, should be given this same benefit. However, that is precisely what the court of appeals has ordained. This Court should not allow the palable fraud which is invited by the court of appeals' erroneous favor of § 17 over § 16.

If the court of appeals' decision is allowed to stand, lending institutions in states which recognize tenancy by the

entirety or community property will be precluded from extending credit to spouses whose principal assets are property so held – a potentially devastating economic and social consequence, particularly to young married couples dependent upon credit for their purchases of home appliances, automobiles, and other consumer goods and services. Furthermore, all lending institutions which heretofore have extended such credit to spouses on their joint undertakings in reliance upon such jointly held property, as a result of the court of appeals' decision herein, today are in peril of incalculable losses, the heroic magnitude of consumer credit considered. Such consequences, neither intended by Congress nor required by the bankruptcy act's language, should not be permitted by this Court to occur.

2. SINCE MICHIGAN LAW PERMITS TENANCIES BY THE ENTIRETY, HAVING AS AN INCIDENT THE RIGHT OF A JOINT CREDITOR TO EXECUTE THEREON AFTER THE DISCHARGE OF ONE SPOUSE IN BANKRUPTCY, THE FEDERAL COURTS SHOULD NOT INTERFERE WITH THIS LOCAL MATTER.

A state law which frustrates the objectives of federal law is rendered invalid by our Constitution's Supremacy Clause. However, the only reason Mr. Harris' interest in the entirety property was not subject to the jurisdiction of the bankruptcy court was because of the incidents attaching to such property under Michigan law. By statute, Michigan has recognized the estate of tenancy by the entirety as it existed at common law and as modified by Michigan law. See *Hoyt* v. *Winstanley*, 221 Mich 515 (1922). Michigan law has provided that one of the incidents of entirety property is that a wife's interest therein may be reached by a joint judgment on a writing executed by her and her husband even after her husband's discharge in bankruptcy. In *Edwards & Chamberlin* v. *Pethick*, 250 Mich 315 (1930), plaintiff, after discharge in bankruptcy of a husband, sought to enforce a joint judgment against the husband and wife on a note signed by both. The Michigan supreme court discussed the matter thusly:

"That the discharge is a bar to the enforcement of

plaintiff's claim against the husband personally, there can be no doubt. Plaintiff, however, here seeks to recover a joint judgment against the husband and wife under the provisions of Act No. 158, Pub. Acts 1917 (Comp. Laws Supp. 1922, §11488). A copy thereof appears in the margin. This act *abrogates* the common-law disability of married women to enter into certain kinds of contracts, and provides that it shall be competent for them to make themselves jointly liable with their husbands upon any written instrument executed by them both. The provision in section 2 that the instrument shall contain a statement that no undue influence or constraint has been exerted against the wife has been eliminated by amendment (Act No. 287, Pub. Acts 1929).

"The purpose of this act is apparent. Prior to its enactment, a husband and wife whose only property interests were held by them by the entireties had much difficulty in obtaining credit. At common law, neither of them could deal with the estate so held apart from the other. Neither had any interest which could be subjected by creditors so as to affect the rights of the survivor. Under this statute, a written obligation, executed by both of them, may, after recovery of a joint judgment, entered pursuant thereto, be satisfied out of any property held by them by entireties. The statute will be of no benefit to a creditor relying on it as a means of enforcing a joint obligation so created if the husband, by securing a discharge in bankruptcy, may deprive him of his right to a joint judgment against them both.

"The plaintiff is not here seeking to obtain a personal judgment against the husband. Under the provisions of section 4, it is made the duty of the court to determine whether the judgment is rendered upon such a written instrument as the wife may render herself liable upon jointly with her husband, and its recital thereof in the judgment shall be indorsed on the execution, if one be issued, for the guidance of the officer making levy thereunder. Satisfaction may then be had out of any property

held by them by the entireties. It is presumed that he has turned over all his property to the trustee in bankruptcy. But he had no such interest in that held by him and his wife by the entireties as rendered it subject to the claims of his creditors in the bankruptcy proceeding." 250 Mich 315, 318-320.

The court of appeals by its decision in this case of Harris has altered the principal incidents of Michigan's estate of tenancy by the entirety. Formerly a co-debtor of a bankrupt who had an interest with the bankrupt in entirety property was not relieved of liability for the debt by the bankrupt's discharge; under the *Harris* ruling, this liability is altered by its extinguishment.

It must be emphasized that this ruling releases a wife from *all* liability on a joint note with her bankrupt husband, for under the Michigan statute earlier quoted (CL 1948, 557.51-557.54, MSA 26.181-26.184.), her liability on such a note is only joint; it does not extend to any property other than that held by her jointly with her husband, and such property may be executed against only under a joint judgment.*

This interference with and alteration of the local property law of Michigan is not necessary to effectuate the purpose of the bankruptcy act and should not be sanctioned by this Court.

3. THE AVAILABILITY OF CONSUMER CREDIT WILL BE ADVERSELY AFFECTED BY THIS DECISION.

In isolation this case does not loom large. The loan was for $5,599.68 and the judgment awarded by the common pleas court was for $2,466.44. However, if allowed to stand, the court of appeals' decision will drastically curtail the availability of bank credit to citizens having such relatively modest requirements.

The very reason the Michigan statute (CL1948, 557.51-557.54, MSA 26.181-26.184), above discussed, was

*Except in the case of death of one spouse or divorce.

passed, and the reason the Michigan courts have enforced it in the manner they have, is to make credit more readily available. In *McPherson* v. *Gregory*, 271 Mich 580, 582-583 (1935), the Michigan supreme court said:

> "The rule formerly in force in this State was that the contract of a married woman, to be binding upon her, must have related to her sole and separate estate—be a contract in her own interest, for her own benefit. Many people possessed of considerable real estate and other property held such property as tenants by the entirety and found it difficult to borrow money on their promissory notes or to obtain property on credit, and many business houses and financial institutions found also the old law rule stood in the way of the enforcement of honest obligations, and there grew up a demand for a modification of the old rule so as to make property held by a husband and wife jointly liable for their joint obligations. Act No. 158, Pub. Acts 1917, was passed, and subsequently amended by Act No. 287, Pub. Acts 1929 (3 Comp. Laws 1929, §§ 13062–13067, inclusive)."

The rule decreed by the court of appeals in this case will bear most heavily on those least able to bear the burden – the families of modest means whose only asset consists of the family realty. If a lending institution is told that recourse to the only asset of any significance is irrevocably barred to it in the event of bankruptcy of either spouse, unsecured loans of the type involved in the instant case simply will not be made as a matter of practical economics. The real benefit of the court of appeals' decision will inure to those with substantial holdings of realty who, despite having incurred debts, will have their holdings insulated from their obligations by the expedient of only one spouse (perhaps the wife?) obtaining a bankruptcy discharge.

Thus, much more is at stake here than a bank's effort to realize on a small judgment. The very fabric of bank loans to the average family, and particularly to recently married couples, is in jeopardy, and will remain so as long as the court of appeals' decision is permitted to stand.

(i — j) Documents Appended

There are appended hereto copies of the judgment of the common pleas court for the city of Detroit, the opinion and order of the federal district court, the opinion and judgment of the court of appeals, § 70(a) of the bankruptcy act and the bankruptcy court's order discharging Mr. Harris.

Relief Requested

Petitioner respectfully prays that this Honorable Court grant its Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BODMAN, LONGLEY, BOGLE,
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June 27, 1972.

Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RITCHIE A. HARRIS, Plaintiff -v- **MANUFACTURERS NATIONAL BANK OF DETROIT, a National Banking Association,** Defendant	**CIVIL ACTION NO. 36171**

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ON DEFENDANT'S MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

This is a civil action wherein plaintiff seeks to enjoin defendant from proceeding with an action in the Common Pleas Court of the City of Detroit, Michigan on a note signed jointly by plaintiff and his wife. Plaintiff claims that defendant, having failed to petition the bankruptcy court to have the discharge of plaintiff stayed to allow defendant to proceed in state court to obtain a joint judgment on the note, has waived its right to a judgment against the plaintiff since he has been discharged in bankruptcy. Plaintiff has filed a motion for summary judgment or in the alternative a motion for temporary injunction claiming that there is no genuine issue as to any material fact, the only question to be decided by the Court being "Whether the discharge of a husband in bankruptcy precludes the subsequent rendition of a joint judgment against husband and wife?" Defendant agrees that this is the sole question for the Court to decide, and has filed its own motion for summary judgment accompanied by a motion to dismiss alleging no federal jurisdiction over the subject matter and failure to state a claim for which relief can be granted. Plaintiff has responded to both of these motions and the parties have fully briefed the legal questions presented.

Plaintiff alleged no basis for federal court jurisdiction in his complaint, but argues in brief that jurisdiction is had pursuant to 28 U.S.C.A. § 1334, giving federal courts original and exclusive jurisdiction over matters involving questions of bankruptcy. On March 24, 1971 Judge Julian P. Rogers of the Common Pleas Court entered a judgment in favor of the Manufacturers National Bank against the Harris' jointly. Defendant now claims that the failure of plaintiff to aver jurisdiction in his complaint and the recourse plaintiff has in the appellate courts in the state from the judgment in Common Pleas Court require the dismissal of this cause.

This Court does have jurisdiction over the present action. The pleading by which petitioner invokes the jurisdiction of the court "is in substance and effect a supplemental and ancillary bill in equity, in aid of and to effectuate the adjudication and order made by the same [bankruptcy] court." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 78 L.Ed. 1230. The sixth circuit case of *Roubib [sic]* v. *Michigan Bank*, 345 F.2d 782 (6th Cir. 1965) affirmed the dismissal by Judge Machrowicz of this district of a case factually similar to the instant case on the ground that plaintiffs had failed to appear in the state court action and plead discharge in bankruptcy as a defense to the action by the bank to recover on the note executed by bankrupt and his wife. For this reason plaintiffs were precluded from seeking an injunction in federal court. In the present case plaintiffs did appear and defend against the action in the Common Pleas Court which decided precisely the same legal question presented here in favor of the defendant Manufacturers National Bank. It is thus apparent that plaintiffs did plead the discharge in bankruptcy in that suit.

For these reasons this Court will accept jurisdiction of this cause of action under 28 U.S.C.A. § 1334 as alleged by plaintiffs and the motion to dismiss is therefore DENIED.

Having accepted jurisdiction we move to the question inherent in the summary judgment motions, *i.e.*, which law, federal or state, will govern the disposition of this case? Under Michigan law an individual discharge in bankruptcy, as in this case, is not a defense to a suit on a joint obligation. *Kolalowski [sic]* v. *Cyman*, 285 Mich. 585 (1938); *Edwards & Chamberlain*

[sic] Hardware Co. v. *Pethick*, 250 Mich. 315, 82 A.L.R. 1232 (1930); *McPherson* v. *Gregory*, 271 Mich. 580 (1935); *In re Estate of Lucas*, 272 Mich. 1 (1935). Thus under Michigan law defendant in this case would be entitled to a joint judgment against plaintiff Harris and his wife on the note to be satisfied out of property held by them by the entireties, despite the discharge of Harris in bankruptcy. This is precisely the holding of the Common Pleas Court in this case. The same result would be required in this Court if this were a diversity case and this Court were governed by the law of the State of Michigan. *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 82 L.Ed. 1188, (1938). Jurisdiction here is under 28 U.S.C.A. § 1334, however, and *Erie* is thus not applicable. See, *Fetter* v. *U.S.*, 269 F.2d 467 (6th Cir. 1959) (reversing judgment for the plaintiff by Thornton, J. in a case factually similar to this case). Jurisdiction in *Fetter* was based on 28 U.S.C.A. § 1345 (suits involving the United States as plaintiff), thus enabling the court to follow the construction of the bankruptcy law in *Phillips* v. *Krakower*, 46 F.2d 764 (4th Cir. 1931) which held that a discharge in bankruptcy removed the entire property beyond the reach of the creditors. Although the *Fetter* case involved a suit against the wife alone on the joint obligation the court specifically chose to follow bankruptcy law as opposed to Michigan law which applied to suits to be satisfied out of property held by the entirety. The instant case is to be distinguished from *Fetter*, however, in that *Fetter* involved the United States as a party. This not being the case here, this Court feels it has the choice of following Michigan law or the federal law as applied in *Fetter*.

> In cases arising under federal statutes, remedies are governed by the directive of the statutes or if no directive, then by rules fashioned by the federal courts. A rule set up by a decision of the federal court may adopt the state law or may fashion the governing rule of law according to its own standards. *U.S.* v. *Helz*, 314 F. 2d 301 (6th Cir. 1963) (reversing a decision by Picard, J. of this district).

The court in *Helz* held that federal law and not Michigan law was to be applied when the United States sued a wife for the balance due on FHA notes executed by husband and wife

for improvements on a home owned by them in the entirety. Under Michigan law, according to *Fetter*, recovery against the wife would have been precluded.

The instant suit involves an attempt to recover a joint judgment against the bankrupt and his wife, unlike the *Fetter* and *Helz* cases. Additionally, the United States' only interest in the instant suit is via bankruptcy administration, not as a party to the litigation either in federal or state court. Thus, in light of the guideline suggested in *Helz* above for selecting the law applicable in a particular situation, this Court holds that the law of the State of Michigan applies and according to *Kolakowski*, defendant herein would not be precluded by the discharge in bankruptcy from recovering a joint judgment against bankrupt and his wife on their joint obligation. Because of this ruling it will not be necessary to disturb the finding of the Common Pleas Court of the City of Detroit, Michigan on this same question in this case. Thus, the injunction will not issue and defendant's motion for summary judgment is GRANTED as against plaintiff's motion for summary judgment. Appropriate orders may be submitted covering the Court's ruling on the motion to dismiss and the two motions for summary judgment.

Date: June 11, 1971.

/s/ STEPHEN J. ROTH
United States District Judge

Appendix A-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RITCHIE A. HARRIS	)	
Plaintiff,	)	
-vs-	)	No. 36171
MANUFACTURERS NATIONAL BANK OF DETROIT, a National Banking Association	)	
Defendant.	)	

ORDER

GRANTING SUMMARY JUDGMENT FOR DEFENDANT

DENYING DEFENDANT'S MOTION TO DISMISS

DENYING SUMMARY JUDGMENT TO PLAINTIFF

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 22nd day of JULY, A.D., 1971.

PRESENT: HONORABLE STEPHEN J. ROTH
U.S. District Judge

The above entitled cause having been submitted to the Court upon the motions and briefs of the respective parties, and the Court having found that it does have jurisdiction over said cause, and that Plaintiff herein is not entitled to a summary judgment, however, that Defendant is entitled to a summary judgment, and the Court having been fully advised in the premises;

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is denied.

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is denied.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is granted, and that Defendant's joint judgment against the Plaintiff and his wife in the Common Pleas Court for the City of Detroit is valid, and Defendant may proceed in said matter.

IT IS HEREBY FURTHER ORDERED that said judgment for the Defendant be awarded without costs to either party.

/s/ STEPHEN J. ROTH
Judge

Approved as to form:

/s/ HARRY D. HIRSCH, JR.

Appendix B

No. 71-1788

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RITCHIE A. HARRIS, Plaintiff-Appellant, -v- **MANUFACTURERS NATIONAL BANK OF DETROIT, etc.,** Defendant-Appellee.	**Appeal from the United States District Court for the Eastern District of Michigan.**

Decided and Filed March 30, 1972.

Before: WEICK and CELEBREZZE, Circuit Judges, and O'SULLIVAN, Senior Circuit Judge.

CELEBREZZE, Circuit Judge. This is an action in which Plaintiff-Appellant Harris seeks an injunction against the Defendant-Appellee Bank's execution of a state court judgment on an unsecured note signed jointly by Harris and his wife. This appeal is taken from the District Court's grant of Defendant-Appellee's motion for summary judgment. For the reasons set forth below, we reverse the judgment of the District Court.

On September 12, 1969, Harris and his wife obtained a business loan from Defendant-Appellee, for which they jointly signed an unsecured promissory note in the amount of $5,599.68, payable in monthly installments. Default occurred in the installment due May 15, 1970, and under the terms of the note, the entire note became due and payable upon that default.

On or about July 1, 1970, Harris filed a petition in bankruptcy in the United States District Court for the Eastern District of Michigan. He received a discharge in bankruptcy dated November 2, 1970.

On or about August 28, 1970, Defendant-Appellee, with notice of Harris' petition in bankruptcy, filed suit in the Common Pleas Court for the City of Detroit, seeking a joint judgment against Harris and his wife for the unpaid amount of the promissory note. This suit was tried after Harris' November 2, 1970, discharge in bankruptcy, and Harris raised this discharge as a defense to the Bank's suit. On or about March 24, 1971, the Common Pleas Court entered a decision in which it ruled that under Michigan law the Bank was entitled to a joint judgment against Harris and his wife, notwithstanding Harris' discharge in bankruptcy.

On or about March 11, 1971, Harris brought the present action in the District Court, seeking an injunction against the Bank's then pending suit in the Detroit Common Pleas Court and against any attempts by the Bank to collect the debt. Upon stipulated facts, each party moved for summary judgment. In a decision rendered June 11, 1971, the District Court ruled that the law of the State of Michigan controlled the question of whether Harris' discharge in bankruptcy barred the execution of the joint judgment against Harris and his wife. Finding that Michigan law would permit such execution, the District Court granted the Bank's motion for summary judgment on July 22, 1972.

Initially, it should be noted that the District Court, having adjudicated Harris' petition in bankruptcy, properly held that it had jurisdiction over the present action as "a supplemental and ancilliary bill in equity, in aid of and to effectuate the adjudication and order made by the same [bankruptcy] court." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 239 (1934). Because Harris appeared in the state court proceeding and pleaded the defense of discharge in bankruptcy, the present case is distinguishable from this Court's decision in *Rouhib* v. *Michigan Bank*, 345 F.2d 782 (6th Cir. 1965).

With respect to the District Court's choice of law, there is no dispute that under Michigan law the Bank's joint judgment against Harris and his wife can be executed, notwithstanding Harris' discharge in bankruptcy. M.S.A. § 26.182 vests in

married women the power and capacity to bind themselves to joint liability with their husbands on written instruments. M.S.A. § 26.183 provides that a joint judgment obtained against a husband and wife shall be satisfied from any real estate held by them as tenants by the entirety and from any other property held by them jointly with the right of survivorship. Although these statutes do not mention the effect of a husband's or wife's discharge in bankruptcy, the Supreme Court of Michigan has expressly ruled that a joint judgment obtained against a husband and wife pursuant to these statutes is unaffected by the husband's discharge in bankruptcy:

> "The purpose of [M.S.A. §§ 26.181-184] is apparent. Prior to its enactment, a husband and wife whose only property interests were held by them by the entireties had much difficulty in obtaining credit. At common law, neither of them could deal with the estate so held apart from the other. Neither had any interest which could be subjected by creditors so as to affect the rights of the survivor. Under this statute, a written obligation, executed by both of them, may, after recovery of a joint judgment, entered pursuant thereto, be satisfied out of any property held by them by entireties. *The statute will be of no benefit to a creditor relying on it as a means of enforcing a joint obligation so created if the husband, by securing a discharge in bankruptcy, may deprive him of his right to a joint judgment against them both.*" *Edwards & Chamberlin Hardware Co.* v. *Pethick*, 250 Mich. 315, 319, 230, N.W. 186, – (emphasis added). *See also Kolakowski* v. *Cyman*, 285 Mich. 585, 281 N.W. 332 (1938).

The only question before this Court, therefore, is whether the District Court erred in applying Michigan law. In *Fetter* v. *United States*, 269 F.2d 467 (6th Cir. 1959), this Court was faced with facts substantially the same as those of the present case and similarly involving the Michigan law described above. Fetter and his wife had jointly signed unsecured FHA notes for the value of work done on property owned by them as tenants by the entirety. The United States became the owner of these notes by way of assignment and sued to collect the balance due

thereunder. Prior to the filing of these suits by the United States, Fetter was discharged in bankruptcy, and he raised his discharge as a complete defense to the actions. The District Court entered a joint judgment against Fetter and his wife, noting that although Fetter had been discharged in bankruptcy, his wife's joint liability under the notes – as provided for under the Michigan statutes – was not affected by his discharge. Recognizing the clear requirement of Section 17 of the Bankruptcy Act, 11 U.S.C. § 35, that a discharge shall release the bankrupt from all provable debts (except those specifically stated therein), this Court reversed the District Court and held that the discharge released the husband from all joint and several liability under the notes and, ipso facto, the wife from her joint liability thereunder. In thus ruling that the Fetters' joint obligation under the notes was terminated by the husband's discharge in bankruptcy, this Court fully recognized that the opposite result would be required under Michigan law.

In granting Defendant-Appellee's motion for summary judgment, the District Court ruled that this Court's choice of law in *Fetter* was not controlling in the present case, since federal jurisdiction in Fetter was based on 28 U.S.C. § 1345 (suits involving the United States as plaintiff), whereas federal jurisdiction is the present case is based on 28 U.S.C. § 1334 (bankruptcy matters and proceedings). We do not believe this technical distinction between *Fetter* and the present case warrants the District Court's resort to Michigan law. Nothing in the *Fetter* opinion suggests that the overriding policy of Section 17 of the Bankruptcy Act, which was found to be controlling in the case, should be abandoned in the present case simply because the United States is not the plaintiff.

Moreover, we believe the Supreme Court's recent decision in *Perez* v. *Campbell*, 402 U.S. 637 (1971), thoroughly undercuts the District Court's belief that it was free to apply Michigan law despite the fact that the *Fetter* decision had found the Michigan law to be in conflict with Section 17 of the Bankruptcy Act. In *Perez*, the Supreme Court struck down as unconstitutional part of an Arizona statute which provided that the driver's license and registration of an uninsured judgment

debtor would be suspended until such time as the judgment was satisfied, and such suspension would be unaffected by the judgment debtor's discharge in bankruptcy. Finding this provision to be in direct conflict with Section 17 of the Bankruptcy Act, the Court held that it was unconstitutional under the Supremacy Clause.

Although *Fetter* and the present case involve a conflict between state case law and the Bankruptcy Act, whereas *Perez* involved a conflicting state statute, the Supreme Court's adherence to the overriding purpose of Section 17 of the Bankruptcy Act in *Perez* fully supports the *Fetter* decision and its applicability to the present case. We believe the Michigan case law at issue here presents a more direct conflict with Section 17 than did the Arizona statute in *Perez*. The Arizona statute provided that a seemingly tangential burden of his indebtedness (*i.e.*, suspension of his driving privileges) could accompany the judgment debtor after his discharge in bankruptcy. In contrast, the decisions of the Supreme Court of Michigan provide that the direct burden of a joint judgment for a joint obligation existing at the time of the husband's discharge in bankruptcy can be obtained against the husband and wife subsequent to that discharge [*Edwards & Chamberlin Hardware Co.* v. *Pethick*, 250 Mich. 315, 230 N.W. 186 (1930)] or, alternatively, that a joint judgment entered against the husband and wife shall be unaffected by the husband's subsequent discharge in bankruptcy [*Kolakowski* v. *Cyman*, 285 Mich. 585, 281 N.W. 332 (1938)]. Such a joint judgment constitutes a direct burden on the husband subsequent to his discharge in bankruptcy because under M.S.A. § 26.183 the property held by the husband and wife as tenants by the entirety may be attached in satisfaction of the joint judgment. This immunity from a husband's discharge in bankruptcy, which the Michigan Court has granted to joint judgments against the husband and wife, would seemingly cause less of a conflict with Section 17 in states where spouses own property as tenants in common or joint tenants; in such states, each spouse's interest in the jointly held property is encumberable and transferable, and the interest of the wife alone can therefore be attached under the joint judgment while

the interest of the discharged husband remains free from attachment. *See United States* v. *Rassmussen,* 184 F. Supp. 351 (D. Minn. 1960); *Collier on Bankruptcy,* Vol. 4A, Para. 70.17, at 190-92 (4th ed. 1971). In states such as Michigan, however, where spouses own jointly help property as tenants by the entirety, each spouse has an undivided interest in the entirety of the property; neither spouse can transfer his interest without the consent of the other, and neither spouse can subject his interest to his individual liabilities during the lifetime of the other. *See Fetter* v. *United States, supra,* 269 F.2d at 469; *Phillips* v. *Krakower,* 46 F.2d 764 (4th Cir. 1931); *Collier, supra,* at 180. Therefore, under the Michigan decisions, the entirety of the property held by the husband and wife is subject to satisfaction of the joint judgment, notwithstanding the fact that the husband's provable debts have been discharged in bankruptcy.[1]

The net effect under the Michigan rule is that only the husband's several liability, and not his joint liability, under the joint obligation constitutes a "provable debt" from which he is released under Section 17.[2] As noted by this Court in *Fetter,* however, Subsection 63(a) (1) of the Bankruptcy Act, 11

[1]Section 16 of the Bankruptcy Act, 11 U.S.C. § 34, provides that the liability of a codebtor shall not be altered by the discharge of the bankrupt. This Section appears to preserve the joint liability of a wife after a husband's discharge, thus permitting a joint judgment against the spouses, when the husband and wife hold jointly owned property as tenants in common or joint tenants. *See United States* v. *Rassmussen,* 184 F. Supp. 351 (D. Minn. 1960); *Collier, supra,* Vol. 1A, Para. 16.08, at 1536-37. Application of Section 16 to cases where the spouses hold property as tenants by the entirety, however, would in effect result in a preservation of the entire joint liability of both the husband and wife since the discharged husband's interest in the property attachable thereunder cannot be isolated and removed from a joint judgment against the spouses. *See Phillips* v. *Krakower, supra; Collier, supra.* The same problem in applying Section 16 arises where the spouses hold community property. *See Gibbons* v. *Dexter Horton Trust & Savings Bank,* 225 F. 424 (D. Wash. 1915); *Collier, supra,* at 1536 n.4.

[2]While acknowledging the requirement of Section 17 that a discharge shall release the bankrupt from all provable debts, the Supreme Court of Michigan has interpreted this requirement to be a bar only to a "personal" judgment against the husband. *Edwards & Chamberlin Hardware Co.* v. *Pethick, supra,* 250 Mich. at 317-18, 230 N.W. at 186-187; *Kolakowski* v. *Cyman, supra,* 285 Mich. at 590, 281 N.W. at 335.

U.S.C. § 103(a) (1), provides that provable debts shall include "a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition . . . ." Nothing in Section 17 or Section 63 permits the exclusion of the husband's joint liability from provable debts under the former simply because the property attachable under the joint obligation is held by the codebtor spouses as tenants by the entirety. Rather, the Michigan case law at issue here directly conflicts with Section 17 and with the overriding purpose of the Bankruptcy Act – that the bankrupt shall have "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Perez* v. *Campbell, supra,* 402 U.S. at 648, quoting *Local Loan Co.* v. *Hunt,* 292 U.S. 234, 244 (1934).

We find no merit in Defendant-Appellee's argument that under Michigan law a suit seeking a joint judgment against a husband and wife is recognized as a *quasi-in-rem* action directed at the property held by the entirety, and that such a judgment should thus be unaffected by the husband's personal discharge in bankruptcy. The essence of this argument is that because the property held by the husband and wife as tenants by the entirety does not pass to the trustee in bankruptcy when the husband is adjudicated bankrupt, joint judgments which may be satisfied from such property should not be barred by the husband's discharge. *See Edwards & Chamberlin Hardware Co.* v. *Pethick, supra,* 250 Mich. at 320-21, 230 N.W. at 187-188. In *Fetter,* this Court expressly acknowledged this fact that property held by the entirety does not pass to the trustee in bankruptcy, yet it nonetheless ruled that the husband's discharge in bankruptcy precluded a joint judgment against the husband and wife which could be satisfied from such property. In *Phillips* v. *Krakower, supra,* the Court of Appeals for the Fourth Circuit similarly acknowledged that a joint judgment against the husband and wife would be barred by the husband's discharge in bankruptcy, notwithstanding the fact that such a joint judgment attached to property held by the entirety which could not pass to the trustee in bankruptcy. 46 F.2d at 765. We similarly conclude that the fact that the property held by the entirety does not

pass to the trustee in bankruptcy in no way precludes our determination that a joint judgment which could attach to that property is barred by the husband's discharge in bankruptcy.

It is significant to note that when the 1938 Bankruptcy Act was enacted, Congress was fully aware of the unique problems which estates by the entirety present under federal bankruptcy law. It was argued before the House that the ability of the bankrupt to obtain a discharge of all provable debts without having to surrender certain nonassignable assets – including property held by the entirety – to the trustee in bankruptcy constituted a virtual fraud under the earlier Act. *See Collier, supra,* Vol. 4A, Para. 70.03, at 37. In response to this criticism, Congress inserted, *inter alia,* the third paragraph of Section 70(a) in the 1938 Act, 11 U.S.C. § 110(a):

> "All property, wherever located, except insofar as it is property which is held to be exempt, in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt, shall, to the extent it becomes so transferable, vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy."

With Congress having chosen to provide only this limited form of relief from the problems which estates by the entirety create under the Bankruptcy Act, we do not believe that federal courts are empowered to adopt broader remedies promulgated by state courts, particularly when those state remedies directly conflict with the specific requirement of Section 17 of the Bankruptcy Act.

For the reasons set forth above, we conclude that the District Court erred in applying Michigan law contrary to this Court's decision in *Fetter* v. *United States, supra,* and in thus failing to grant Harris an injunction against Defendant-Appellee's execution of the joint judgment entered by the Common Pleas Court of Detroit. The judgment of the District Court is therefore reversed with instructions to grant the injunction.

Appendix B-1

No. 71-1788

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RITCHIE A. HARRIS,	)
Plaintiff-Appellent,	)
v.	)
MANUFACTURERS NATIONAL BANK OF DETROIT, a national banking association,	)
Defendant-Appellee.	)

JUDGMENT

Before: WEICK and CELEBREZZE, Circuit Judges, and O'SULLIVAN, Senior Circuit Judge.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed for further proceedings consistent with the opinion.

It is further ordered that Plaintiff-Appellant recover from Defendant-Appellee the costs on appeal as itemized below and that execution therefor issue out of said District Court.

Entered by order of the Court.

/s/ JAMES A. HIGGINS, *Clerk*

Filed March 30, 1972.

BANKRUPTCY ACT § 70(a)

(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks, and in applications therefor: *Provided,* That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided,* That rights of action ex delicto for libel, slander, injuries to the person of the bankrupt or of a relative, whether or not resulting in death, seduction, and criminal conversation shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process: *And pro-*

vided further, That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) property held by an assignee for the benefit of creditors appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this title, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court.

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.

All property, wherever located, except insofar as it is property which is held to be exempt, in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor or successors, if any, upon his or their appointment and qualifica-

tion, as of the date of bankruptcy.

The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

Appendix D

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

In the Matter of	**In Bankruptcy No.**
RITCHIE ALBERT HARRIS d/b/a RICH'S SIX MILE & INKSTER SERVICE aka HARRIS KLEINER ENTERPRISES	**No. 70-1794-B**
	DISCHARGE OF BANKRUPT

It appearing that on July 1, 1970 a Petition in Bankruptcy was filed in the above entitled matter; the bankrupt was duly adjudged a bankrupt; and that after due notice by mail, no objections to the discharge of the bankrupt were filed within the time fixed by the Court, or objections to the discharge of the bankrupt were filed and heard and were not sustained; NOW THEREFORE,

IT IS ORDERED that the above Ritchie Albert Harris is hereby discharged from all debts and claims which, by the Bankruptcy Act, are made provable, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.

GEORGE BRODY
Referee in Bankruptcy

Dated:

November 2, 1970

Appendix E

STATE OF MICHIGAN
IN THE COMMON PLEAS COURT FOR THE
CITY OF DETROIT

THE MANUFACTURERS NATIONAL BANK OF DETROIT, A National Banking Association,	)	
Plaintiff,	)	**No. 4,057,009**
vs.	)	
RITCHIE A. HARRIS and MONICA J. HARRIS, Jointly Only,	)	
Defendants.	)	

Judgment granted as prayed for by Plaintiff, $2,466.44, jointly only as to Ritchie A. Harris and Monica J. Harris. No several liability is to attach as to either defendant. A discharge in bankruptcy by the husband operates as to his individual liability, but not as to joint obligations.

Both parties have filed extensive briefs.

It would appear that in Federal Court when all parties are subjected to the Federal law, a discharge in bankruptcy by the husband would also operate to extinguish joint liabilities by husband and wife, however, no Federal case as of this date has refused to recognize State law or has definitely stated that in these instances the Federal holdings would supersede State laws but, to the contrary, has intimated that State law is governing. Michigan law in this instance has repeatedly held that joint liabilities are not extinguished by one of the parties being discharged in bankruptcy as to joint obligations. The court of lower jurisdiction is compelled to follow precedent as set by its superior court.

Detroit, Michigan
Dated March 24, 1971

/s/ JULIAN P. RODGERS, JR.
Common Pleas Judge